IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT CHANDIGARH

FAO No.469 of 1987
Date of Decision. 06.01.2011

Yash Pal and others .....Appellants

Versus

State of Haryana through Collector, Sonepat and others
.....Respondents

2. **FAO No.470 of 1987**

Ankit son of Ravinder Paul Gupta .....Appellant

Versus

State of Haryana through Collector, Sonepat and others
.....Respondents

3. **FAO No.471 of 1987**

Smt. Usha Gupta wife of Ravinder Paul Gupta .....Appellant

Versus

State of Haryana through Collector, Sonepat and others
.....Respondents

4. **FAO No.472 of 1987**

Rohit Gupta son of Ravinder Paul Gupta .....Appellant

Versus

State of Haryana through Collector, Sonepat and others
.....Respondents

Present: Mr. C.B. Goel, Advocate
for the applicant(s).

None for respondent Nos.1 to 6.

Mr. Kunal Garg, AAG, Haryana
for respondent Nos.7 and 8.

5. **FAO No.286 of 1988**

Ravinder Kaur son of Chuni Lal Mali No.73-A, New Colony, Gurgaon of

Truck No.HRU 4245 and another

.....Appellants

Versus

Smt. Roop Devi widow of Baldev Singh and others .....Respondents

Present: None for the appellant.

None for respondent Nos.1 to 6.

Mr. Kunal Garg, AAG, Haryana
for respondent Nos.7 and 8.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

1. Whether Reporters of local papers may be allowed to see the judgment ?
2. To be referred to the Reporters or not ?
3. Whether the judgment should be reported in the Digest?

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K. KANNAN J.(ORAL)

1. FAO Nos.469 to 472 of 1987 address the claims of the respective claimants seeking for enhancement of compensation.

2. FAO No.469 of 1987 is at the instance of the children of the deceased, who was their mother aged 53 years. She was house wife and the claimants were adult sons and daughters. The post-mortem certificate revealed that she was aged 58 years and in oral evidence, it had been stated that she was aged 56 years. The Tribunal considered the fact that the eldest son was 38 years of age and therefore, took that deceased must have been 58 years of age. Learned counsel states that the age itself was not in dispute and the age as entered in the postmortem and what was spoken to by the witness ought to have been, therefore, accepted. I will accede to such a contention and take the age to be 53 years. The claimants were said to be members of the joint family with their mother and their father had already expired. I

will take the value of the domestic service contributed to the family at Rs.1,000/- per month and adopt a multiplier of 11 and take the loss of dependence at Rs.1,32,000/-. I will make a further addition of Rs.3,000/- towards funeral expenses and round off the figure at Rs.1,35,000/-. The amount in excess over what has been already directed shall also attract interest @6% from the date of the petition till the date of payment and it shall be distributed equally amongst all the claimants.

3. FAO No.469 of 1987 is allowed to the above extent.

4. FAO No.470 of 1997 is for enhancement of claim for injury suffered by Ankit, who was aged one. The Tribunal had considered the fact that the child had a soft tissue swelling of the left thigh and he had fracture of the left thigh and shaft had been introduced therein. Medical bills had been produced to the extent of Rs.283.50. The Tribunal took the medical expenses to be Rs.1,000/- and provided for an additional amount of Rs.9,000/- for pain and suffering and assessed the compensation at Rs.10,000/-. For a fracture and surgical intervention, a provision for Rs.9,000/- in the year 1985, in my view, is appropriate and there is no scope for any enhancement.

5. The appeal in FAO No.470 of 1987 is, therefore, dismissed.

6. FAO No.471 of 1987 relates to a claim for compensation for injury suffered by Usha Gupta, who was aged 30 years. She was a post graduate and said to be a householder. She had a fracture of collar bone, fracture of ulna and fracture of left ankle and injury to her right eye and injuries to both sides of scalp. She had been hospitalized for six days and had been under treatment of one Dr. N.D. Aggarwal at

Patiala subsequently.

7. Dr. Rajinder Pal Sharma, who had initially treated her at the medical college and hospital at Rohtak produced medical report evidencing the injuries and he also spoke about the fact that square nailing had been done to reduce a fracture and that it could be removed after the union of the bones which was observed by him that there had been a proper union of the bones. The assessment of disability, which he had made at 20% was on the basis that there had been a reduction in circular movement of the arm to the extent of 20%. The Tribunal found that there could be some exaggeration on the part of Dr. Rajinder Pal Sharma in the assessment of disability. However, there was evidence that from the date when the accident took place on 5.12.1985, she was under treatment for fairly a long period of one year and she had also undergone a surgery for reduction of the fracture. The medical expenses and for transportation there was production of bills to the tune of Rs.5663.35 and the Tribunal assessed that there could have been more expenses incurred which are not supported by bills and allowed for Rs.10,000/- as going for medical expenses and transportation. The Tribunal awarded Rs.22,000/- for pain and suffering and assessed a total compensation of Rs.32,000/-. For three fractures, which she had obtained and fo the surgical intervention that she suffered the assessment of compensation for the relevant year at Rs.22,000/- for pain and suffering seems appropriate. She had 20% disability which means a functional disability of the arm which ought to have impaired at her domestic chores. I will provide for an additional amount of Rs.15,000/- towards disability and also provide that it will

attract interest @6% from the date of the petition till the date of payment.

8. The award shall, therefore, stand enhanced till the above extent and the appeal is allowed as above.

9. FAO No.472 of 1987 is for ehancement of claim for injuries suffered by Rohit aged 3 years and before the Tribunal, the evidence was tendered to the effect that he had a linear scar of about two and half inches on the left side of the fore-head and running along the place of hair parting. The MLR filed showed that there had been a lacerated wound on the left half of fore-head extending from the temporal and involving upto the right upper lid and extending upto the middle of the fore-head. There had been bleeding present and underlying bone was visible. There had been clotted blood from his nostrils. The medical bills were produced top the extent of Rs.1,000/- and for facial disfigurement by the child, who had linear scar on his face, the Tribunal provided for Rs.5,000/-. I will make a further provision of Rs.5,000/- for pain and suffering, which the child must have undergone. I will make, therefore, an additional amount of Rs.5,000/- for the claim made in FAO No.472 of 1987.

10. The appeal in FAO No.472 of 1987 is allowed to the above extent with interest @6% from the date of the petition till the date of payment and the liability shall be in the same manner as determined by the Tribunal namely the State of Haryana and the insurer of the truck.

11. The claim in FAO No.286 of 1988 arises on account of death of one Baldev Singh, aged 48 years. He was employed as a driver of

the Haryana Roadways, Depot Kaithal. There is no representation on behalf of the counsel for the appellant and I do not want to detain the case for an adjournment or dismiss it for default. I proceed to examine the case on its own merits and reappriase the compensation as below.

12. Pay certificate of the deceased had been filed as A2 that showed that he was drawing a salary of Rs.1248.40. I would provide for 30% increase as a prospect of future increase and take the average salary at Rs.1623/-. He was supporting a family of wife and three minor children and I will make a deduction of 1/4th towards personal expenses and take the remaining as contribution to the family and hold Rs.1217/- as the contribution. He was aged 48 years and I would adopt a multiplier of 13 and determine Rs.1,89,852/- as the loss of dependence. I will provide for the conventional heads of loss of consortium and loss of love and affection to the children at an additional amount of Rs.12,500/- and provide for a further sum of Rs.5,000/- towards loss to estate and Rs.2500/- as the funeral expenses. The amount of compensation that will become payable would be Rs.2,09,852/-, rounded off to Rs.2,10,000/-.

13. In this case, the Tribunal had found that the driver of the truck was wholly responsible for the accident and had completely dismissed the claim. Consistent with the finding recorded already in other cases, which I have disposed of in FAO Nos.469 to 472 of 1987, I will apportion the liability in the same fashion and hold the Haryana Roadways Corporation as liable for 50% and the amount determined shall, therefore, be borne to the extent of 50% with interest @7.5%. The remaining 50% shall be borne by the owner of the truck and the

insurance company. The liability for payment of death even for a negligent act of a driver cannot be denied by an owner and the insurer, for they would be liable for the entire compensation under the Workman's Compensation Act. Since the claimants were entitled to file the claim before the Motor Accident Claims Tribunal in a case where yet another vehicle was involved, there is no requirement of having to peg down the determination to the scale of compensation as provided by the Workmen's Compensation Act. The liability shall be as determined under the Motor Vehicles Act itself and the remaining 50% shall, therefore, be borne by the owner and the insurer of the truck, which the deceased was driving.

14. The appeal is allowed to the above extent and the liability of the paymnet shall be shared between Haryana Roadways and the owner and insurer of the truck in equal measures.

(K. KANNAN)
JUDGE

January 06, 2011
Pankaj*